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IN THE
Supreme Court of the United States
OCTOBER TERM, 1988

HOLY SPIRIT ASSOCIATION FOR THE UNIFICATION OF WORLD CHRISTIANITY, *et al.*,
Petitioners,

v.

DAVID MOLKO, *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of the State of California

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MOTION FOR LEAVE TO FILE A BRIEF AS *AMICI CURIAE* AND BRIEF OF THE NATIONAL COUNCIL OF CHURCHES OF CHRIST IN THE U.S.A., JAMES E. ANDREWS AS STATED CLERK OF THE GENERAL ASSEMBLY OF THE PRESBYTERIAN CHURCH (U.S.A.), THE AMERICAN BAPTIST CHURCHES IN THE U.S.A., AND THE CATHOLIC LEAGUE FOR RELIGIOUS AND CIVIL RIGHTS AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS

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MOTION OF THE NATIONAL COUNCIL OF CHURCHES OF CHRIST IN THE U.S.A., JAMES E. ANDREWS AS STATED CLERK OF THE GENERAL ASSEMBLY OF THE PRESBYTERIAN CHURCH (U.S.A.), THE AMERICAN BAPTIST CHURCHES IN THE U.S.A., AND THE CATHOLIC LEAGUE FOR RELIGIOUS AND CIVIL RIGHTS FOR LEAVE TO FILE BRIEF AS *AMICI CURIAE* IN SUPPORT OF THE PETITION

The National Council of Churches of Christ in the U.S.A., James E. Andrews as Stated Clerk of the General Assembly of the Presbyterian Church (U.S.A.), The American Baptist Churches in the U.S.A., and the Catholic League for Religious and Civil Rights hereby request, pursuant to Rule 36 of the Rules of this Court, leave to file the accompanying brief as *amicus curiae* in

support of Petitioners.* The National Council of Churches of Christ in the U.S.A. ("National Council of Churches") is a cooperative agency of 32 national Protestant and Eastern Orthodox religious bodies in the United States. It has an aggregate membership of over 40,000,000 people. The Presbyterian Church (U.S.A.) is a national, Christian denomination with churches in all fifty states. Through its antecedent religious bodies it has existed as an organized religious denomination within the current boundaries of the United States since 1706. It now has approximately 2,950,000 active members and approximately 11,500 congregations organized into 172 presbyteries and 16 synods in regular gradation. The American Baptist Churches in the U.S.A. is composed of four principal national agencies, and thirty-seven regional, city and state organizations in the United States, who represent some six thousand congregations with approximately 1.5 million members. Although the Presbyterian Church (U.S.A.) and the American Baptist Churches in the U.S.A. are members of the NCC and are represented by it in this brief, they join in their own right as well on the basis of their own individual denomination policies. The Catholic League for Religious and Civil Rights is a non-profit voluntary association, nationwide in membership, organized to promote good will and harmonious relations in the community, combat all forms of religious prejudice and discrimination, and to defend the rights and sanctity of each human life.

Amici believe the ruling of the California Supreme Court challenged in the petition has had, and will continue to have, a serious chilling effect on religious proselyting and conversion in California and elsewhere. Further, *Amici* believe that the Court, in deciding whether

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* Pursuant to Rule 36, *amici* have obtained the written consent of the Petitioners, but were denied consent to file by respondents. Petitioners' letter of consent has been filed with the Clerk of the Court.

to grant the petition, would benefit from its views as to how the new tort of "coercive persuasion" affects the rights of its members to freedom of speech and free exercise of religion protected by the First Amendment.

For the foregoing reasons, *amici's* motion for leave to file a brief in support of petitioners should be granted.

Respectfully submitted,

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QUESTION PRESENTED

Amici Curiae will address the following question:

Whether an adult who hears persuasive religious messages from church representatives and as a result embraces the beliefs of the church and becomes a member can subsequently hold the church liable in tort and recover damages based on the church's non-violent and non-threatening speech and practices which persuaded the individual to convert to the church's religious beliefs.

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BRIEF OF *AMICI CURIAE*

INTEREST OF *AMICI CURIAE*

1. The National Council of Churches of Christ in the U.S.A. ("National Council of Churches") is a cooperative agency of 32 national Protestant and Eastern Orthodox religious bodies in the United States. It has an aggregate membership of over 40,000,000 people. The National Council of Churches submits this brief as *amicus curiae* because the ruling of the California Supreme Court challenged in the petition has had, and will continue to have, a serious chilling effect on religious proselyting and conversion in California and elsewhere.

The National Council of Churches submits this brief even though its Faith and Order Commission found that the doctrine of the Holy Spirit Association for the Unification of World Christianity and New Education Development System, Inc. (collectively, the "Unification Church" or "Church") is not consistent with that of traditional Christian theology as believed through 20 centuries and it is not eligible for membership in the NCC. The brief is submitted pursuant to the following policy adopted in 1955 by the Governing Board of the National Council of Churches[1]: "The National Council of Churches defends the rights and liberties of cultural, racial and religious minorities." Policy Statement: Religious and Civil Liberties in the U.S.A.

2. The Presbyterian Church (U.S.A.) is a national unincorporated religious association which has existed as an organized Christian denomination within the current boundaries of the United States since 1706. It is composed of approximately 2,950,000 active members belonging to approximately 11,500 congregations organized into

[1] The Governing Board is a deliberative body of about 250 persons chosen by the member denominations in proportion to their size and support of the Council. Positions taken by the Governing Board do not necessarily reflect the views of all members of the National Council of Churches.

172 presbyteries and 16 synods in regular gradation. Through its highest governing body, the annual General Assembly, the Presbyterian Church has repeatedly confirmed its understanding of the church as a missionary entity with a divine call to the conversion of all people to the faith of the church. While the Presbyterian Church (U.S.A.) does not share the same belief system as the Unification Church, and its General Assembly has seriously questioned whether or not the Unification Church should be considered a Christian organization because of the content of its theology, the policies and views of the Presbyterian Church (U.S.A.), as expressed by its General Assembly, are in general agreement with the view of this brief with regard to the nature of religious conversion and the rights of religious bodies under the Constitution of the United States to engage in proselytism and to seek the conversion of others to its views by open and non-coercive witness and persuasion. The Presbyterian Church (U.S.A.), by the careful procedures of its own rules, has chosen to become an *amicus curiae* in this case because of the issues of freedom of speech and religion that are involved.

3. The American Baptist Churches in the U.S.A., through its General Board in December of 1986, adopted the American Baptist Policy Statement on Church and State which affirms that: "The Church has the duty and right to worship, educate and witness through evangelism and prophetic action; to provide spiritual nurture, encourage self-discipline and teach morality."

Although American Baptists disagree with many of the doctrines and practices of the Unification Church, the issues presented in this case are basic to Baptist principles of religious liberty and separation of church and state.

4. The Catholic League for Religious and Civil Rights is a non-profit voluntary association, nationwide in membership, organized to promote good will and harmonious relations in the community, to combat all forms of reli-

gious prejudice and discrimination, and to defend the rights and sanctity of each human life.

STATEMENT

This case involves the question of whether an adult who hears persuasive religious messages from church representatives and as a result embraces the beliefs of the church and becomes a member, but who subsequently becomes disaffected and claims he was deceived and coerced into religious conversion, can hold the church liable in tort and recover damages (including monies contributed to the church while he or she was a practicing member). In the ruling challenged in the Petition, the California Supreme Court held that such an action can be maintained. *Amici* assert that the ruling below would result in undue regulation of religious proselyting and would subject religious conversion and religious beliefs to judicial scrutiny. For these reasons it violates First Amendment protections of speech and free exercise of religion and should be reversed.

It is important to *amici*'s position that the case involves persuasion solely as a result of religious messages —*i.e.*, speech and free exercise of religion. The case does not involve violence or threats of violence, physical deprivation or coercive restraint. Nor does it involve minors or mentally incompetent persons. Further, there is no suggestion that the proselyting efforts complained of were due to any pecuniary motive or, indeed, were for any purpose other than exposing the respondents to the beliefs of the Unification Church in the hope of converting them to the faith.

At the outset, it is also important to make clear that *amici* neither endorse nor defend deception or coercion in proselyting. *Amici*'s concern is that the effects of the ruling below cannot be limited to prohibiting deception and coercion. The factual allegations on which the court permitted respondents to argue "deception" and "coercion" call into question wholly legitimate practices employed by virtually all proselyting religions. *Amici*

strongly oppose this sweeping encroachment on First Amendment protections of freedom of speech and religion. What particularly concerns *amici* is the harm that delay in reviewing the question presented will inflict upon their religious practices. Aside from the obvious injury that a public trial will cause petitioners by exposing this religion to the adversary process, the mere presence of the court's ruling places a cloud over proselytizing by every religion in California. *Amici*'s religious freedoms will be jeopardized every day that "coercive persuasion" remains a viable theory of tort liability. Only review by this Court at this time can ensure that *amici*'s right to free exercise of religion is guaranteed.

A. Respondents' Dealings With The Unification Church

The case involves proselyting by members of the Unification Church and the conversion and subsequent disaffection of respondents David Molko and Tracy Leal. While on a street in San Francisco, respondent Molko was engaged in conversation by two members of the Unification Church who invited him to a dinner. Following dinner, he decided to travel to a Church retreat at Boonville, and later accepted an invitation for further lectures and activities at a Church facility called "Camp K." It is undisputed that he was always free to leave, but continually chose not to do so. Molko alleges he first learned of the group's identity twelve days after the initial exchange with members of the Church. He chose to remain with the Church and some months later formally joined it. He left the Church only after being kidnapped and "deprogramed."

Respondent Leal's experience with the Church was substantially similar: she was approached by members of the Church, accepted an invitation to dinner, and chose to participate in the activities at Boonville and Camp K. The misrepresentation alleged by Leal also occurred in the initial stages of her association with the Church when, in response to her questions, the individuals she

met allegedly denied that they were "Moonies." Like Molko, she indisputably was free to leave but chose to remain. She claims to have first learned the group's identity 22 days after the first contact. Like Molko, she chose to remain with the group and went on to join the Church formally. She also left the Church only after being kidnapped and "deprogramed."

B. The Ruling Of The California Superior Court And Court Of Appeal

Respondents brought an action against the Unification Church in California Superior Court claiming fraud, intentional infliction of emotional distress and restitution.[2] The superior court granted a motion by petitioners for summary judgment—holding that a viable cause of action could not be stated because respondents admitted that they knew the identity of the Church well before they suffered the "damage" of being "induced to join the Unification Church." [3]

Respondents appealed, arguing before the California Court of Appeal that reliance on the initial contacts with the Unification Church was justifiable because in those contacts the Church representatives had gained control of their minds through "coercive persuasion" (also referred to as "thought reform," "mind control," and

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[2] Respondents also alleged false imprisonment. However, that claim was dismissed below and is no longer part of the case. In ruling that the claim lacked merit, the court of appeals pointed out that "during the period of his alleged imprisonment, Molko commuted daily to a bar review course." Similarly, the courts below found that Leal was "free to depart at any time; she was not physically restrained, subject to threats of physical force or subjectively afraid of physical force."

[3] The court also held that the Church's "conduct was not extreme and outrageous in the sense required to support [a claim for intentional infliction of emotional distress]." With regard to the restitution claim, the superior court ruled: "Molko's own uncontroverted description of the circumstances under which he made the gift [of $6,000] demonstrates that he did so out of a then held religious belief."

"brainwashing")—thereby rendering them incapable of resisting inducements to join the Church.

The court of appeal characterized this argument as an effort "to avoid the seemingly fatal consequences" of the undisputed fact that the respondents were fully aware of the truth regarding the Unification Church shortly after the initial contacts and well before they joined it. Affirming the ruling of the superior court on all counts, the court of appeal held that respondents' theory of "coercive persuasion" must be rejected on constitutional grounds because the theory would ask the jury to find that "healthy adults were induced to join the Church and to change their life style as a result of 'brainwashing' rather than by religious faith . . . ." Pet. App. 99 (citing *Katz* v. *Superior Court*, 73 Cal. App.3d 952, 987-988 (1977)). "[B]ut, it would not be possible . . . to reach th[at] result without questioning the authenticity and the force of the Unification Church's religious teachings and permitting a jury to do likewise, which is constitutionally forbidden." *Id.* at 12 (citing *United States* v. *Ballard*, 322 U.S. 78, 87 (1944)). Thus, "[i]f liability could be imposed in such circumstances, any disaffected adherent of a religion could bring suit alleging that he had been 'brainwashed' by the religious organization, and courts would become entangled in determining which former adherents acted out of true faith and which were subject to 'mind control.'" *Id.* at 14.

C. The Ruling Of The California Supreme Court

The California Supreme Court reversed on all three counts. The principal ground for reversal was the court's adoption of respondents' "coercive persuasion" theory. In that connection, the court described the issue with regard to the fraud claim as follows:

> The legal question is simply whether a religious organization can be held liable on a traditional cause of action in fraud for deceiving nonmembers into subjecting themselves, without their knowledge or consent, to coercive persuasion.

In resolving this issue, the court concluded that churches can be held liable for "deceiving" nonmembers into subjecting themselves to "coercive persuasion." The court held that a trial is appropriate with regard to "whether Molko and Leal were, by means of coercive persuasion, rendered unable to respond independently upon learning they had been deceived . . . ." In addition, the court allowed respondents to proceed with their claim for intentional infliction of emotional distress on the theory that "fraudulent inducement into an atmosphere of coercive persuasion . . . is extreme and outrageous." Finally, the court noted that Molko's restitution claim "is a rational extension of this fraud theory: he contends, in effect, that one of his damages from the fraud was a $6,000 loss."

REASONS FOR GRANTING THE PETITION

If the ruling of the California Supreme Court were what it purports to be—merely an application of traditional tort law to a church—*amici* would not be submitting this brief. Far from applying "traditional" tort law, however, the ruling below creates a *new* tort of "coercive persuasion" pursuant to which liability can be imposed on a church solely on the basis of a court's subjective determination of the propriety of religious messages. The ruling below does not narrowly proscribe deceit; it subjects proselyting by all churches to regulation and involves the courts in examining the validity of religious conversions.

The core of *amici*'s concern lies in the court's acceptance of certain factual allegations as sufficient to create a triable issue of "fraud."[4] The court's ruling would burden legitimate practices of virtually all proselyting religions. Consider the following examples:

- The court criticized the Church representatives for not identifying themselves as "Moonies" or "mem-

[4] *Amici* discuss only the fraud claim in this brief because it was the focus of the California Supreme Court. But, if the fraud claim is impermissible, the remaining claims must fail as well.

bers of the Unification Church." Apparently, the court would make a Church liable if proselyters do not identify themselves "up front" in a particular way, and if they do not associate themselves with certain nicknames (i.e., "Moonies") or other potentially negative stereotypes and public perceptions. Under this standard, courts would have to determine what labels are appropriate for each religion—a task that strikes at the heart of religious self-definition.

- The court found it significant that the Church representatives did not state "that their purpose in approaching [Molko] and inviting him to dinner was to recruit him into the Church." Apparently, the court would find a church liable any time a member approached a person with proselyting intent and failed to inform the potential convert of the purpose to "recruit" him. Under this standard, a church could be found liable, for example, when a teenager invited a friend to Sunday services without informing the friend of an intent to "recruit" him.

- The court also found significant the fact that during the dinner the potential convert was "held in constant conversation with group members" and was "kept apart from other guests." Apparently, the court would impose a restriction on conversation with non-members at church dinners, coffee houses, firesides and other gatherings.

- The court deemed it significant that Molko "did not know and was not told Boonville was an indoctrination facility for the Unification Church." The court attributed the following characteristics to this "indoctrination facility": a tightly planned daily schedule involving exercise, meals, lectures on brotherly love and social problems, prayer, testimonials, group discussion and group singing. Apparently, the court would require the label "indoctrination facility" to be posted in front of all religious "retreat" facilities having these characteristics—which are common to many, if not most of them.

At bottom, the ruling is nothing more than a judicial attempt to determine what is an acceptable religious experience. But that is precisely what the Founder's protected against in the First Amendment. The ruling has had, and will continue to have, a serious chilling effect on religious proselyting and conversions in California. This burden on speech and the free exercise of religion must be lifted—and lifted now.

A. The Proselyting And Conversion Process Is Central To Most Christian Religions

To understand the serious burden on religion imposed by the ruling below, it is important to understand the proselyting and conversion process. That process begins with initial contacts with a potential convert—sometimes through formal "witnessing," "evangelizing," or "missionary work" and sometimes through less formal contacts of church members with friends, family, business associates and others.[5]

The goal is conversion—which involves a "convert" embracing the beliefs of the religion, making changes in order to live according to those beliefs and ultimately joining the church. While it may come all at once (as in the case of Paul the Apostle—Acts 9), more commonly conversion develops step-by-step as the convert learns more and more about the religion (as in the case of those who were converted by Paul during his years as a proselyter). The proselyter has the task of being sensitive to the ability of the potential convert to comprehend and accept information, and must tailor messages accordingly. As with any significant change, the process of conversion can be emotionally unsettling, even agonizing, to the convert and his or her family. The time involved from initial contacts through conversion may vary

[5] Beginning with the initial contacts and continuing thereafter, the potential convert is educated in the beliefs of the religion. This education may include lectures, group discussions, and reading of religious "texts." Education may occur in virtually any public or private place.

greatly: conversion may occur almost immediately or it may take weeks, months or even years.

The proselyting and conversion process is central to most Christian religions. It is deeply rooted in Biblical teachings, for example: "And he said to them, 'Go into all the world and preach the gospel to the whole creation'" (Mark 16:15) and "Go ye therefore, and teach all nations, baptizing them. . ." (Matthew 28:20). The scriptures make clear that the purpose of proselyting is conversion: "Let him know that he who converteth the sinner from the error of his way shall save a soul from death, and shall hide a multitude of sins" (James 5:20); in Paul's proselyting he called upon people to "[r]epent . . . and be converted" (Acts 3:19).

Most current-day Christian religions actively seek to "convert" people to their faith. For example:

- Pope Paul VI in *Evangelico Nuntiandi* stated: "We wish to confirm once more that the task of evangelizing all people constitutes the essential mission of the Church . . . . Evangelizing is in fact the grace and vocation proper to the Church, her deepest identity. She exists in order to evangelize . . . ."
- William R. Cannon, a Bishop in the United Methodist Church, stated: "Evangelism, therefore, is not optional. It is mandatory. It is not one among several characteristics of Christianity. It is expressive of the essence of Christian faith. When the church becomes merely a 'holding operation,' it ceases to exist; for its nature is not to preserve itself, but, like its crucified Lord, to give itself away in behalf of others. It serves the world by winning its inhabitants to Jesus Christ." W. Cannon, *Evangelism in a Contemporary Context*, 1 (1974).
- The Church of Jesus Christ of Latter-Day Saints ("Mormons") has an extensive world-wide missionary program and is guided by the following doctrine: "Every member of the Church is a missionary, with the responsibility of teaching the

gospel by word and deed to our Father's other children. This responsibility arises through church membership alone, without the receipt of any special call. Church members are under covenant, made in the waters of baptism, 'to stand as witnesses of God at all times and in all things, and in all places that ye may be in, even until death.' They are subject to the divine pronouncement: 'It becometh every man who hath been warned to warn his neighbor.'" Bruce R. McConkie, *Mormon Doctrine*, 2d ed. (1966) (citations omitted).

- The Jehovah's Witnesses have developed "efficient and far-flung publishing enterprises, missionary training schools, and evangelism programs." S. Ahlstrom, *A Religious History of the American People*, 807 (1972).
- The Quakers at the beginning of their movement were evangelical and extremely dynamic: "All tried to make converts and tried all the time." E. Trueblood, *The People Called Quakers*, 5 (1966).
- A fundamental tenet of the American Mennonites has been an "active evangelism characterized by a keen personal interest in the personal conversion and salvation of one's associates." J. Wenger, *Glimpses of Mennonite History and Doctrine*, 120, 2d ed. (1947).

In sum, the decision of the California Supreme Court to expose the Unification Church to liability for its efforts to convert new members to its religious faith strikes at the core of *amici*'s beliefs and practices as well as those of many other churches.

B. The Court's Regulation Of The Content And Presentation Of Proselyting Messages Seriously Burdens Proselyting And Conversion

The ultimate effect of the California Supreme Court's ruling is to regulate proselyting by all religious—*i.e.*, to specify information that must be provided in advance to potential converts and to delineate acceptable and unac-

ceptable ways of presenting proselyting messages. The factual allegations upon which the court relies show that the court would regulate the initial contacts with a potential convert (requiring that specific information be provided regarding the identity of the church and that the potential convert be informed of the purpose to "recruit" him) and the subsequent education process (regulating practices at religious dinners, coffee houses, firesides, retreats and the like).[6]

Regulation of the content and presentation of proselyting messages seriously undermines the proselyting and conversion process. The essence of proselyting is to get beyond misconceptions fostered by prejudice and rumor and to give the potential convert an opportunity to judge religious beliefs on their own merit. Approaching potential converts on a common, non-threatening ground and overcoming preconceived notions and natural resistance to new or different ideas is essential to successful proselyting. This imperative to tailor the message to the audience has been an important part of proselyting since the beginning of Christianity. For example, the Apostle Paul stated (1 Corinthians 9:19-23):

> For though I am free from all men, I have made myself a slave to all, that I might win the more. To the Jews I became as a Jew, in order to win Jews; to those under the law I became as one under the law—though not being myself under the law—that I might win those under the law. To those outside the law I became as one outside the law—not being without law toward God but under the law of Christ—that I might win those outside the law. To the weak I became weak, that I might win the weak.

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[6] Contrary to the lower court's position, no comfort can be found in the fact that the court stopped short of requiring proselyters to obtain informed consent prior to initiating religious conversations —*i.e.*, that the court opted not to require proselyters to issue a theological "*Miranda*-warning." The burden imposed by a jury's post-hoc review of the propriety of proselyting messages, and by the church being subjected to substantial damage awards, is equally debilitating.

> *I have become all things to all men, that I might by all means save some.* I do it all for the sake of the gospel, that I may share in its blesesings.

In this regard, the proselyter must be sensitive to the receptiveness and understanding of the potential convert —providing as much or as little information as the neophyte is prepared to comprehend and accept.[7] Because of the importance of proselyters' discretion over the content and presentation of proselyting messages, it is necessary that such discretion be *doubly* protected under the First Amendment. First, religious speech—just like any other speech—is covered by the long-recognized obligation to give broad latitude in favor of freedom of speech and protection against state-sponsored censorship. See *Gertz* v. *Robert Welch, Inc.*, 418 U.S. 323, 342 (1974) ("breathing space" is essential to exercise of free speech); *Riley* v. *National Federation of the Blind of North Carolina*, —— U.S. ——, 108 S.Ct. 2667 (1988) ("The First Amendment mandates that we presume that speakers, not the government, know best both what they want to say and how to say it. . . . "[G]overnment, even with the purest of motives, may not substitute its judgment as to how best to speak for speakers and listeners. . . .")

Second, religious speech is also covered under the First Amendment's protection of the free exercise of religion. As this Court has long recognized, the "right to free exercise of religion unquestionably encompasses the right to preach, proselyte and perform other similar religious functions." *McDaniel* v. *Paty*, 435 U.S. 618, 626 (1978) (plurality opinion). The "spreading of one's religious beliefs or preaching the gospel through distribution of religious literature and through personal visitation is an

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[7] The Apostle Paul acknowledged the importance of providing religious information according to the abilities of the potential convert (1 Corinthians 3:1-3):

> "But I, brethren, could not address you as spiritual men, but as men of the flesh, as babes in Christ. I fed you with milk, not solid food; for you were not ready for it; and even yet you are not ready, for you are still of the flesh."

age-old type of evangelism with as high a claim to constitutional protections as more orthodox types." *Murdock* v. *Pennsylvania*, 319 U.S. 105, 110 (1944); see *Fowler* v. *Rhode Island*, 345 U.S. 67, 69-70 (1953).

These First Amendment protections ensure that proselyters can present religious information in the manner they see fit. The California Supreme Court's attempt to restrict proselyters' discretion over the content and presentation of religious messages seriously undermines their ability to perform the proselyting function and encroaches upon these First Amendment protections.

C. Examination Of Whether Religious Speech Is Unduly "Coercive" Subjects Religious Conversion To Judicial Review—Which Is Prohibited By The First Amendment

It is beyond dispute that the First Amendment prohibits judicial review of the validity of religious beliefs and conversions. This principle was clearly stated by this Court in *United States* v. *Ballard*, 322 U.S. 78, 87 (1944):

> Men may believe what they cannot prove. They may not be put to the proof of their religious doctrines or beliefs. . . . Many take their gospel from the New Testament. But it would hardly be supposed that they could be tried before a jury charged with the duty of determining whether those teachings contained false representations. . . .

See also *Presbyterian Church* v. *Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U.S. 440 (1969).

The ruling below contravenes this prohibition. The examination of whether religious speech is unduly "coercive" requires courts to examine the validity of religious conversion. Pursuant to the ruling below, tort liability attaches if religious conversion was a result of proselyting that can be labeled "coercive" even though in only a non-physical sense. Thus, the intellectual and emotional experience of conversion is called directly into question. Further, the examination of the legitimacy of the experience of conversion necessarily involves evaluat-

ing the validity of the accompanying religious beliefs. In his concurring and dissenting opinion below, Justice Anderson aptly summarized this point as follows[8]:

> [A] religious conversion is not subject to judicial scrutiny regardless of the methods used because such scrutiny necessarily entails the questioning of religious faith—scrutiny that is absolutely forbidden by the First Amendment.

Pet. App. 47. The majority below contends, however, that it can regulate proselyting without examining conversion. That position shows a fundamental misunderstanding of the proselyting and conversion process. As discussed above (see pp. 6-11, *supra*), proselyting and conversion are inextricably intertwined. Regulation of proselyting necessarily involves scrutiny of the validity of religious conversion. Moreover, regulation through tort litigation of proselyting chills *both* proselyting and conversion.

D. No State Interests Justify The Burdens Imposed On The Proselyting And Conversion Process

The court below acknowledges that the First Amendment applies to proselyting and conversion. Further, it admits that its ruling burdens religious speech, although the court seriously underestimates the impact of tort law in this context. Nevertheless, the court below ultimately holds that the burdens it imposes are justified by state interests in preventing "fraudulent conduct" that exposes people to "coercive persuasion."[9] By finding a "com-

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[8] In *Katz* v. *Superior Court*, 73 Cal.App.3d 952 (1972), the court used this same analysis to reject the "coercive persuasion" theory—stating in part:

> Evidence was introduced of the actions of the proposed conservatees in changing their lifestyle. When the court is asked to determine whether that change was induced by faith or by coercive persuasion is it not in turn investigating and questioning the validity of that faith?

[9] The court also claims that these burdens are justified by an interest in "protecting families from suffering" from the "stress"

pelling state interest" in prohibiting non-physical and non-threatening religious proselyting activities, the California Supreme Court has opened the door to extraordinary regulation by the state of church activities.

Court-imposed burdens on religious speech must comport with First Amendment guarantees. *NAACP* v. *Claiborne Hardware Co.*, 458 U.S. 886 (1982); *New York Times* v. *Sullivan*, 376 U.S. 254 (1964); *Hustler Magazine* v. *Falwell*, —— U.S. ——, 108 S.Ct. 876 (1988). Thus, "[o]nly the greatest abuses, endangering paramount interests, give occasion of permissible limitation" of free exercise rights. *Sherbert* v. *Verner*, 374 U.S. 398, 406 (1963); see *Wisconsin* v. *Yoder*, 406 U.S. 205, 215 (1972) ("only those interests of the highest order and those not otherwise served can overbalance legitimate claims to the exercise of religion").

What makes the state court's decision pernicious is that it has defined the state's interest as overlapping the Church's religious mission. Thus, a central part of the Church's mission is to change the beliefs and attitudes of the potential convert, but the court has held that the state has an interest in preventing the kind of change in beliefs caused in this case. Protecting a person from "brainwashing" is merely a derogatory way of saying a person must be protected from embracing new and life-changing beliefs. The court thus arrogates to itself the authority, on behalf of the State, to determine which conversions constitute a "great abuse" and therefore can be freely regulated, even to the point of destruction of a church through protracted litigation and ruinous

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which occurs when a family member joins a "cult" as a result of fraud and deception. While family relationships should be strengthened and nurtured where possible, religious conversions have been known to strain those relationships ever since Christ first declared: "He who loves father or mother more than me is not worthy of me; and he who loves son or daughter more than me is not worthy of me" (Matthew 10:34-38). Thus, finding a compelling interest in stable family relationships would arguably provide a basis for prohibiting the practices of most religions.

damage awards. It is not surprising that a new religious movement with unorthodox views should be the first church to have its practices restricted in accordance with this supposed "state interest." But once this interest is recognized as legitimate, or worse, compelling, all religions are at risk of having their proselyting efforts restrained by the state's ostensible interest in having a citizenry comprised solely of "un-coerced," secular thinkers. It is also equally clear that this result is fundamentally inconsistent with the First Amendment.

The heavy burdens imposed on proselyting and conversion by the California Supreme Court cannot be justified by any "compelling state interest" and, in any event, the court's approach is not the "least restrictive means" to achieve the state's goal. *Thomas* v. *Review Board*, 450 U.S. 707, 717-718 (1981). The state interest in protecting adults from voluntarily listening to non-violent, non-threatening—although persuasive—religious speech is not compelling. The core issue is *whether adults should be given a cause of action for listening to and being persuaded by speech.* Absent force or threats of force, adults must be responsible for what they listen to, and for their reactions to what they hear. The state cannot protect them by regulating the speaker. Otherwise, proselyting is at an end, as well as many other kinds of persuasive speech. No church should risk damage awards for being too persuasive in its religious speech.

The California Supreme Court's decision turned on its acceptance of the theory that there is such a thing as "coercive persuasion"—a conclusion without basis in empirical fact and lacking acceptance in the phychological profession. It is a theory that casts doubt upon one of the basic assumptions of Western jurisprudence—that competent adults are responsible for their decisions and actions. Petitioners and all other evangelistic religions should not be put in even temporary jeopardy on the basis of such a radical and unproven hypothesis.

Even assuming *arguendo* an interest in protecting against fraud and coercion, the court's approach neither sufficiently identifies the offensive behavior nor limits the remedy to that behavior. Because the court's approach is not tailored to this narrow purpose, it must be reversed as unduly encroaching on First Amendment protections.

The court below found that "coercive" speech can excuse respondents from the consequences of their otherwise voluntary acts. In that regard, it considered two types of evidence: (1) statements by the respondents to the effect they were "brainwashed"; and (ii) declarations of a psychologist, Dr. Margaret Singer, and a psychiatrist, Dr. Samuel Benson, to the effect that religious speech can be "coercive," that "coercive" religious speech can be distinguished from legitimate religious speech, and that coerced conversions can be distinguished from legitimate conversions.

The court below seems to conclude that subjective statements by respondents to the effect they were "brainwashed" are sufficient in and of themselves to state a claim for "coercive persuasion" and to survive summary judgment. If that is the case, the court has given disaffected members a powerful tool for harassing churches. The ruling is an open invitation for abuse. Any disaffected member of any church could claim "coercive persuasion" and seek restitution of contributions. Such suits could become a significant burden on churches—because many members who become disaffected rationalize the experience by blaming someone associated with the church for their conversion and explaining their "error" by claiming "I was duped."

Further, to whatever degree the court below relies on the Singer and Benson declarations, that reliance is seriously misplaced. *Amici* strongly reject Singer's and Benson's analysis. These two academics present a pseudoscientific framework which they claim distinguishes be-

tween an authentic conversion and an "emotional breakdown." [10]

This framework simply is an attempt to do something that historically has proved fruitless: to explain religious practices in scientific terms. In this instance, the effort is particularly insidious because the vagueness and overinclusiveness of the factors could be used to indict the practices of virtually all religions. For example, "control over the social and/or physical environment" could be argued to apply to monasteries and convents, parochial schools, religious retreats, and even 19th Century frontier "camp meetings." To one degree or another, virtually all modern Christian churches can be—in fact, have been—argued to have some or all of the Singer characteristics. The use of this type of analysis subjects to judicial review legitimate proselyting and conversion in all churches. Moreover, the overinclusiveness of the Singer factors reaches beyond the religious context. Those factors can be used as readily to condemn experiences from, for example, law school, medical school, or boot camp.

In sum, Dr. Singer's theory of coercive persuasion, or "brainwashing," must suppose a contrasting circumstance of *authentic* or "valid" conversion, where the alleged evils she identifies are not present. But, the law does not know a "valid" conversion from an "invalid" one any more than it knows a "valid" religion from an "invalid"

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[10] Their framework is summarized in Dr. Singer's "six steps of coercive persuasion": (i) control over the social and/or physical environment; (ii) creation of a sense of powerlessness in the person by stripping away their contact with family; (iii) manipulation by the management level of the organization through a series of rewards, punishments and experiences to inhibit the social behavior of the person; (iv) organizing and manipulation by a series of rewards, punishments and experiences to elicit the behavior the management wants; (v) a closed system of logic where no criticism can be made of the organization; and (vi) the existence of a special uninformed state.

one.[11] The First Amendment simply does not permit a court to re-characterize religious conversion as "mind control" or to entertain a suit against a religion for holding or promulgating "false" or even "unhealthy" beliefs. Because the court below failed to heed this fundamental constitutional truth, its judgment should be reviewed by this Court.

CONCLUSION

The burdens the ruling below impose on proselyting and conversion in California are serious and immediate. Further, the chilling effects of the ruling extend beyond California because proselyting and conversion practices are not readily limited by state boundaries. Proselyting is not the type of activity that can survive with different rules of law being applied to it in different states. For these reasons, the petition should be granted.

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[11] To accept Dr. Singer's standards for a valid conversion and impose liability upon churches which do not meet that test would violate the Establishment Clause by judicially preferring one religion over another. *Grand Rapids School District* v. *Ball*, 473 U.S. 373 (1985).